

OFFICE OF THE ATTORNEY GENERAL

83-00008



CHARLES A. GRADICK
ATTORNEY GENERAL
STATE OF ALABAMA

OCT 5 1982

JAMES R. SOLOMON, JR.
DEPUTY ATTORNEY GENERAL
WILLIAM M. BEKURS, JR.
EXECUTIVE ASSISTANT
WALTER S. TURNER
CHIEF ASSISTANT ATTORNEY GENERAL
JANIE NOBLES
ADMINISTRATIVE ASSISTANT

SEE ALSO SIEGELMAN V. ALABAMA
ASSOCIATION OF SCHOOL BOARDS,
NO. 1000951 (ALA. SUP. CT.
June 29, 2001).

ADMINISTRATIVE BUILDING
64 NORTH UNION STREET
MONTGOMERY, ALABAMA 36130
AREA (205) 834-8130

Honorable Cecil L. Wyatt
House of Representatives
Post Office Box 1
Ramer, Alabama 36069

Teachers - State Employees -
Salaries - Proration

Proration refers to reduction in appropriation of funds appropriated to departments, boards, bureaus and institutions of the state. Salaries of teachers and state employees cannot be diminished, reduced, or prorated other than by voluntary agreement of the employee and the employer.

Dear Representative Wyatt:

This office is in receipt of your recent request for an opinion as to whether the salaries of teachers and/or state employees can be prorated. Proration is a condition provided for in the statutes when revenues are insufficient to pay all appropriations made by the Legislature. Code of Alabama 1975, §41-4-90 provides in pertinent part as follows:

" . . . All appropriations . . . are hereby declared to be maximum, conditional and proportionate appropriations, the purpose being to make appropriations payable in full in the amounts named only in the

Honorable Cecil L. Wyatt
House of Representatives
Page Two

event that the estimated budget resources during each budget year of the period are sufficient to pay all of the appropriations for such year in full. The Governor shall restrict allotments to prevent an overdraft or deficit in any fiscal year for which appropriations are made by prorating without discrimination against any department, board, bureau, commission, agency, office or institution of the state, the available revenues among various departments, boards, bureaus, commissions, agencies, offices and institutions of the state. In other words, said appropriations shall be payable in such proportion as the total sum of all appropriations bears to the total revenues estimated by the Department of Finance as available in each of said fiscal years. The purpose of this provision is to insure that there shall be no overdraft or deficit in the several funds of the state at the end of any fiscal year, and the Governor is directed and required so to administer this article to prevent any such overdraft or deficit." (Emphasis added)

It is evident that the provision of this section in the Code is to require the Governor to order a reduction in the distribution of revenues accruing to the State when it becomes apparent to him that these revenues will be insufficient to pay all of the appropriations made by the Legislature. The proration mentioned in this section refers to a reduction in the appropriation of funds to departments, boards, bureaus and institutions of the State. In other words, proration is directed towards an appropriation and not an individual expenditure. It is directed towards the distribution of funds and limits the distribution of funds by prorating the amount available to those departments, agencies or institutions receiving such funds based on the stated amount of proration by the Governor.

Honorable Cecil L. Wyatt
House of Representatives
Page Three

Once funds are distributed by the State to the departments, agencies, and institutions, it is incumbent upon the heads of the agencies, departments or institutions receiving the funds to limit expenditures to the amount of funds available to pay such expenditures. Since salaries of teachers and state employees are not appropriated in a line item in appropriation bills, there is no authority to prorate salaries. After an exhaustive search by this office, no other authority either statutory or judicial can be found which either requires or authorizes a reduction or proration in salaries of teachers or state employees, other than on a voluntary basis.

Insofar as teachers are concerned, with regard to teachers who have obtained continuing service status or tenure, no action may be taken against them without following the provisions of the Teacher Tenure Law which are found in Code of Alabama 1975, §16-24-1 through §16-24-38. In the case of teachers who have not obtained continuing service status, they normally are employed by contract and they are entitled to all rights under general contract law relative to the enforcement of that contract between the teachers and their employing board of education. These facts must be taken into consideration in any actions concerning the terms, conditions or compensation of teachers.

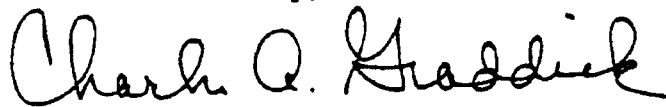
With regard to state employees, who also have a contract of employment with the State, I can find no applicable state law which would allow a proration or reduction in the salaries of state employees other than on a voluntary basis. State employees subject to the merit system are vested with all statutory rights and privileges conveyed by the laws of the State of Alabama.

The contract salary of teachers and state employees, together with legislatively mandated raises, cannot be unilaterally reduced or prorated any more than the contract price for the purchase of school buses, supplies, equipment, utilities, and other contracts can be reduced or

Honorable Cecil L. Wyatt
House of Representatives
Page Four

prorated. This office is cognizant of Amendment 26 to the Constitution of Alabama, 1901, but would point out that this directive is only applicable at the conclusion of the State's fiscal year.

Sincerely,

A handwritten signature in cursive script, reading "Charles A. Graddick". The signature is written in dark ink and is positioned above the typed name.

CHARLES A. GRADDICK
Attorney General

CAG/dn